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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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REPLY COMMENTS

The Sprint Telecommunications Venture ("the Sprint Venture") hereby respectfully provides its reply comments on the Second Notice of Proposed Rule Making in the above referenced proceeding.¹

The Sprint Venture believes that the Commission has received sufficient information on most of the issues to make an informed decision. In general, the Sprint Venture stands on its comments filed June 14, 1995. However, the Sprint Venture believes that a brief reply is warranted to the initial comments by the proponents of switch-based resale that suggest the Commission should require unbundling of all CMRS networks and services, including those offered over newly constructed PCS networks. The Sprint Venture asserts that mandatory unbundling of a CMRS provider's network is unnecessary and inappropriate and that the reseller switch proposals which would impose such a requirement should be rejected.

As its initial comments indicate, the Sprint Venture generally supports application of the Commission's existing cellular resale policy to the broader CMRS market.² The Commission has

¹ In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rule Making, CC Docket No. 94-54, released April 20, 1995 (FCC 95-149) ("Second NPRM").

² See Sprint Venture Comments at 9-10.

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already established reasonable guidelines for cellular resale. In addressing proposals for changes in the current policy with respect to cellular resale, the Commission has made clear what its policy does and does not require in this area, stating that:

[A]ny volume discounts available to cellular's large "retail" customers must be available on the same terms and conditions to resellers. It also means that resellers must be permitted to resell cellular services under the same terms and conditions offered to retail customers.

* * *

We should also note that the Commission has never required cellular companies to establish separate wholesale and retail operations. In the same vein, the Commission's resale policy does not require that carriers charge separate wholesale rates. [Footnote omitted] We observe that some carriers have established wholesale rates, and we do not discourage such pricing. We only require that, at a minimum, no restrictions on resale be imposed.³

In their comments the Telecommunications Resellers Association ("TRA"), Time Warner Telecommunications ("Time Warner"), National Wireless Resellers Association ("NWRA") and Connecticut Telephone and Communications Systems, Inc. ("CTCS") all suggest that the Commission adopt a CMRS network and service unbundling program that they claim will facilitate resale of portions of a CMRS carrier's service.⁴

In adopting its existing cellular resale policy, the Commission has already considered the question of different rates for so-called wholesale customers and has rejected this proposal. The only resale requirement that has been imposed is one of non-discrimination between the largest customers of a cellular provider and any customer that seeks to be a reseller. The Sprint Venture fully supports this form of resale for the broader CMRS market.

³ In the Matter of Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, 6 FCC Rcd. 1719 at ¶¶ 44 & 55.

⁴ TRA at 25-36, Time Warner at 19-20, NWRA at Exhibit A ¶ 1 and CTCS at 5.

The Sprint Venture expects that as many as nine CMRS providers may be operating in a given area. Where there are multiple CMRS providers with duplicate facilities, it's unlikely that any carrier will possess "essential" facilities.⁵ In spite of this lack of essential facilities, those seeking CMRS network and service unbundling claim that the equal access and WATS resale precedent established when the AT&T divestiture was imposed requires CMRS unbundling in at least the cellular context.⁶ This claim is misplaced.

At divestiture, AT&T held a monopoly in the Bell Operating Company local exchanges and in the interexchange markets. Because the Bell loops were "essential" facilities for completion of interexchange calls, they were subjected to equal access requirements and access service was unbundled from local exchange service. Those loops, at that time, were (and still are) essential facilities for telecommunications. Likewise, at that time, AT&T WATS service was a monopoly service. AT&T voluntarily established WATS bulk service and was simply prohibited from restricting its use and resale. However, AT&T was neither forced to provide new services nor required to unbundle its services further. Thus, the equal access and MTS/WATS resale orders clearly cannot be viewed as precedent for the imposition of network unbundling

⁵ The C, D, E and F band PCS auctions have not yet been held. Two of these bands are fully available for auction participation by existing and potential CMRS carriers. Resellers may participate in these auctions and gain rights to operate CMRS spectrum. Not only is the reseller claim that CMRS spectrum is essential incorrect, the resellers continue to retain the ability to become both spectrum- and facility-based through full participation in the PCS auction process. Even if the resellers again choose not to participate in the spectrum auctions or are unsuccessful, they should not be allowed to "take" the spectrum of other CMRS carriers through an inappropriate unbundling program.

⁶ At least one of the proponents of switch-based resale appears to recognize that it is both unnecessary and inappropriate to impose unbundling requirements and other burdensome regulatory requirements on operators of newly constructed PCS networks, as they attempt to compete against well-established incumbent providers of CMRS service. See Time Warner comments at 3,4.

requirements on CMRS carriers, particularly new entrants such as STV, which plainly do not control essential facilities and exercise no market power whatsoever in the provision of CMRS services. Indeed, there is no precedent supporting the idea that a carrier that is not a monopoly may be required to create new services by unbundling its current services and network.⁷

For these reasons, as well as those cited in the Comments of the Sprint Venture and other parties, the so-called reseller switch proposal to unbundle CMRS networks and services should be rejected.

Respectfully submitted,

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⁷ See *MCI Communications v. AT&T*, 708 F.2d 1081, 1132-22 (7th Cir. (1983)), *cert. denied*, 464 U.S. 891 (1983).

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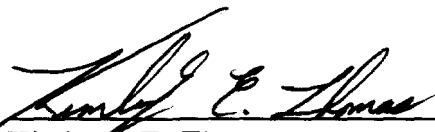
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